AN ACTION AT LAW IN THE REIGN OF EDWARD III.: THE REPORT AND THE RECORD.

IT has been suggested that a paper on the relation of the reports of cases in the Year Books to the records of the same cases found among the Public Records might be of some interest to those readers who are giving attention to the history of law and of legal procedure. In the following pages an attempt is made to show, not in very great detail (for the details would be endless), but in a general way, in what manner the two sources of information differ, and why.

The report and the record were drawn up for two wholly different purposes. The report was intended for the use of the legal profession, including the judges. It was designed to show general principles of law, pleading, or practice. It was, of course, always a report of a particular case, but of one reported solely because it contained, or was supposed to contain, matter of general use. For this reason, the names of the parties and of places were frequently omitted or represented by letters chosen at hazard, or, if given at all, given most inaccurately. They were not the facts which the lawyer wished to know, and would not help to guide him in his pleading, except in cases in which an argument turned upon a description or a misdescription.

The record, on the other hand, was drawn up for the purpose of preserving an exact account of the proceedings in the particular case, *in perpetuam rei memoriam*, but only in the form allowed by the court. The report contains not only the pleadings eventually accepted, but often the reasons or arguments which preceded each, and the reasons or arguments for which other pleadings were disallowed. The record contains no arguments, and no pleadings but those actually allowed. Although it is possible to see in the report the pleadings which were admitted, they are not verbally identical with the corresponding entries on the roll. The pleadings in court were in French, but those entered upon the roll by the clerk or registrar were in Latin.

For these reasons, it frequently happens that the record in

Latin differs widely from the report in French, each containing matter which is absent from the other, each serving to illustrate the other, and, for historical purposes, neither being complete without the other. The report tells how the judges and counsel addressed each other, the courtesy which they showed or did not show to each other, their education according to the principles on which education was conducted in those days, and sometimes, though rarely, their powers of making a joke. The record helps towards none of these things; but, though wanting the life and action of the report, brings to light, in a calmer fashion, innumerable details without which a perfect picture of the social condition of the country cannot be drawn.

It will, perhaps, be asked, How can the record of any case in any term be identified as that which corresponds with any particular report of the same term, when the names of persons and places are not stated in the report itself? The task does, indeed, at first seem hopeless, and certainly presents considerable difficulties. It can nevertheless be accomplished, when the report is of any importance, though the search has to be made through a roll consisting of five or six hundred skins of parchment, closely written on both sides, without index, and with no guide except the name of the county in the margin, which, in the case supposed, is no guide at all.

The report, let us suppose, is a report of an action of formedon in the descender brought by A against B, in respect of lands in C, the donor having been D. It is, of course, necessary to know how an action of this kind is entered on the roll, the form in which the contents of the original writ are represented, and where the count begins. The roll is then examined until a formedon in the descender is found. This is compared with the admitted pleadings in the report, and it will usually be found either to agree so closely as to leave no reasonable doubt that the case is the same, or to differ so widely as to leave no reasonable doubt that it is not. In the latter event, further search must be made, and so on, from case to case, until the one sought is discovered.

As the different kinds of actions were numerous, the number of actions of any one kind on the roll of any particular term is necessarily limited. There were three kinds of actions of formedon alone (in the descender, in the reverter, and in the remainder), each entered in a different form according to its nature. In looking for any particular case, technical knowledge consequently

becomes its own reward, and abridges a labor which would otherwise be absolutely deterrent. The reward, too, is substantial, because not only do A, B, and D become persons with real names and additions, and not only does C become a known parish in an ascertained county, but the doubts left by corruptions or discrepancies in the manuscripts of the reports are removed, and the actual pleadings and the actual judgment are made clear beyond all possibility of question.

General principles are often most easily apprehended through particular instances. Let us now follow a case from beginning to end. A dispute arises in relation to land. The person who feels aggrieved, or his adviser, goes to the Chancery and sues out the original writ which is supposed to be applicable to the particular grievance. The Court of Common Pleas or Common Bench is the court which has jurisdiction in pleas of land, and the tenant (or party opposed to the demandant) is or ought to be summoned or warned by the sheriff, by due process, to appear. A comparatively simple case, which may serve our purpose, occurred in Michaelmas Term, 15 Edward III. (No. 71). It was a case of *cessavit*, — one in which a religious house, having had lands given to it on condition of performing certain services, had, as alleged, ceased to perform them for a period of two years. The demandant, in an action of this nature, hoped, by establishing his claim, to recover seisin of the lands in respect of which the services were due.

From the report of this case we learn that the tenant was the Abbot of Creake; but it does not tell us either who was the demandant, or where the lands were situated. In the record[1] it appears that the demandant was Margaret, late wife of John de Roos, and that the lands were in Gedney, in the county of Lincoln. In the report, the services by which the abbot was supposed to hold are said to be those of finding certain chaplains to sing divine services in her chapel (that is to say matins, mass, vespers, etc.), and of feeding certain poor persons, who were to receive daily certain loaves, etc., as well as "by a certain rent." No further details are given. In the count, however, as entered on the roll, there is far more information, and that of a character which illustrates the life of the people. The demandant counted that the abbot held of her by fealty and the service of three shillings per annum, and by the service of finding one chaplain who was to

[1] Placita de Banco, Mich. 15 Edward III., R°. 457 d.

celebrate daily in the chapel of Saint Thomas the Martyr, situate in a certain messuage which was formerly John Dory's, divine services, which include not only matins, mass, and vespers, but certain prayers named, and others. The feeding of certain poor persons is seen to be the sustenance of five poor persons daily; that is to say, finding for each of them daily one loaf of the weight of fifty *solidi*, with porridge and ale, and finding a dish of meat, or fish, or other food, according to the day, between two of them, and half a dish for the fifth. Each of them was to have also a cloth tunic, suitable to his condition, every other year.

After the count, on the other hand, many matters appear in the report which are not on the roll. Counsel for the abbot, carefully guarding himself against any admission that he is tenant of the freehold or holds of the demandant, pleads in abatement of the count or declaration, which, he says, is not warranted either by statute or by common law. He complains that the demandant's counsel has included in the same count or declaration two different kinds of service, the cesser of which would produce two different effects. The tender of the arrears of the secular services might save the tenancy, whereas no tender could be made of the arrears of the spiritual services, the cesser of which would involve a forfeiture. It must, for instance, be obvious that the arrears of rent could be paid, whereas the omission of the daily performance of divine services in a chapel could never be made good in respect of days which had passed. Counsel for the demandant then says the exception taken applies to the action as commenced by a writ in the common form, because, if the count is not allowed, the particular action comes to an end. Counsel for the abbot practically accepts this argument, repeating that the count cannot be maintained on a common writ, and that the demandant ought to have had a special writ applicable to the particular case. Counsel for the demandant then argues by the analogy of such services as reapings and ploughings, for which a *cessavit* lies, even though arrears be tendered. Counsel for the abbot declines to discuss that point, but repeats that services of two different kinds are included in one declaration or count, whereas by the Statute of Gloucester (c. 4) one writ is given in respect of one kind of services, and by the Statute of Westminster the Second (c. 41) another writ is given in respect of the other kind. The chief justice here decides the point in favor of the demandant, saying that there cannot be two writs in this case, and that the plea is, in fact, to the action of *cessavit*.

Counsel for the abbot then pleads non-tenure: "We are not tenants of the freehold; ready, etc." Counsel for the demandant attempts to deprive him of this plea, on the ground that he has already pleaded to the action by his previous plea in abatement of the count. The court, however, holds otherwise. Counsel for the demandant then argues that this general plea of non-tenure is not good without a specific allegation that the tenant does not hold of the demandant: "In this writ of *cessavit*, which is taken on the cesser and on the tenancy, if he take his plea by way of disclaimer in the freehold, it is no answer unless he say that he does not hold of us, and so take his plea to the action, or unless he admit that he holds of us as mesne, but say that the writ does not lie because another is tenant of the freehold." Counsel for the abbot easily demolishes this argument, saying: "If I be not tenant of the freehold, whether I hold of you or not, the writ does not lie. Will you accept my averment that the abbot is not tenant of the freehold?" The report shows further only that issue was joined on this point.

The count, we may be sure, was not entered upon the roll until it had been held good by the court; but there was no necessity to enter the objections which were insufficient to abate it. In like manner, the plea would not have been entered until the court had allowed it. Thus, all matters occurring in the report between the accepted count and the accepted plea are omitted from the roll. As soon as the plea is reached, however, the roll again becomes the best, and, at the end, the only source of information. The reporter's work was done when he had shown, not only what were the pleadings on which disputes occurred, but how and on what grounds the disputes were settled.

According to the roll, the plea for the abbot was that he did not then hold the tenements, and did not hold them on the day of the purchase of the writ. The demandant replied that on the day of the purchase of the writ, — to wit, on the first day of May, — the abbot did hold; and issue was joined thereon to the country. The *postea* is also entered on the roll, showing how, at *nisi prius*, a jury found that the abbot did hold on the day of the purchase of the writ. Judgment was accordingly given for the demandant to recover seisin.

In this case the entry of the judgment upon the roll was of vital importance to the demandant, as she and her heirs acquired a new root of title thereby, — a title no longer to the services, but to the

land itself. This, however, did not concern the reporter, or the profession for the benefit of which he reported.

There were, however, cases in which the entry of certain matters upon the roll became of importance at stages previous to the entry of judgment. In Hilary Term, in the twelfth year of Edward III. (pages 373–75), an heir brought an action against his father's executors to recover a charter by which it appeared that the father had been enfeoffed of certain land in fee, and which he ought to have as the holder of the land. For the executors it was pleaded that the feoffment was upon condition (as shown by indenture, of which *profert* was made) that, whenever the feoffor or his heirs should pay the feoffee or his heirs or executors £40, it should be lawful for the feoffor or his heirs to re-enter upon the land, and the charter should be held as null. The feoffee in his will directed that the £40 (if paid) should be given to a prior. Judgment was therefore prayed whether the heir could have an action to recover the charter, which would lose its force if the £40 were paid to the executors. Judgment, however, was given that the charter should be delivered to the heir, because the executors could not deny that he was seised of the land as heir, and could not say that the money had been paid to them, or that they had an action to demand it. It would appear that, in the absence of any express direction to the contrary, the special plea on behalf of the executors would have been omitted from the roll, and that the declaration or count would have been followed by the simple entry that the executors could say nothing wherefore the charter should not be delivered. The counsel for the executors, however, prayed that the whole of his plea might be entered on the roll, as a protection to them against damages, in case the feoffor or his heirs should at any future time wish to pay the £40. To this the court consented, and the plea would consequently have been enrolled in its proper place.

In many cases it is apparent that the court directed, *ex officio*, what should be entered on the roll. Thus, in an oyer and terminer in Trinity Term, 12 Edward III. (pp. 615–617), where the felling of trees was alleged, the defendant claimed estovers, and on that ground avowed the carrying away of the trees, as not being against the peace, and prayed judgment whether any tort could be assigned thereon. It is not quite clear what was the plaintiff's reply, but the court decided that the issue should be that the defendant had with force and arms felled and carried away the trees, *absque hoc* that the defendant had estovers. The issue was accordingly so

entered on the roll, notwithstanding that this replication was not expressly pleaded.

It may, perhaps, be thought that the clerk or registrar had a difficult task to perform in entering the pleadings correctly on the roll, and that occasionally he failed. Failure did occur sometimes, and the roll had to be amended by order of the court. Sometimes also apparently the clerk (who was a very important officer, often consulted by the judges with regard to points of practice) discovered his own mistake, and corrected it by substituting an entirely new record of the case for one erroneously entered.

In the sixteenth year of Edward III.[1] there are two records of one and the same case.[2] The first is incomplete; the second is in a different form, and complete. The clerk, however, omitted to vacate the first by placing in the margin the usual words "*vacat quia alibi.*" The proceedings were on the judicial writ of *Quid juris clamat*, brought for the purpose of compelling tenants for life to attorn after a fine had been levied. The tenants, husband and wife, alleged that the wife's estate was an estate tail in virtue of a previous fine, and not a mere estate for life, as purported in the fine on which the *Quid juris clamat* was brought. Then arose a question whether the tenants could be admitted to aver this in opposition to the particular fine on which suit was taken. The court held that they could, and that the fact must be tried by a jury, adding that the whole matter should be entered on the roll, and that inquiry should be had as to the whole.

In making the first entry on the roll a mistake had occurred with regard to the process by which the tenants were required to appear, *Distringas* having been substituted for *Venire facias.* There is also an important difference between the first entry and the second as to the tenor of the earlier fine. In the first it is stated that the tenements had been granted and rendered to the wife and her previous husband and the heirs of their bodies, that they therefore claimed a fee tail in the person of the wife, and that they prayed judgment whether they ought to attorn in respect of such an estate. This was in accordance with the earlier part of the report; counsel for the tenants having distinctly used the words "fee tail," on the ground apparently that the wife was what would in later times have been called tenant in tail after possibility of issue extinct. In the second entry, however, the express claim

[1] H. 16 E. 3, No. 3.

[2] Placita de Banco, Hil. 16 Edward III. R°. 64 and R°. 181.

of a fee tail is omitted, and the following words are substituted: "So that if the same Robert and Margaret (the first husband and the wife) should die without heir of their bodies, the tenements should remain to the right heirs of Robert, and they say that Robert died without heirs issuing from his body and the body of Margaret, and they claim to have such an estate in the person of Margaret, and pray judgment whether they ought to attorn in respect of such an estate." This also is in accordance with the later part of the report, counsel having changed the form of pleading after argument.

We thus see how faithfully the clerks attempted to place the pleadings on the roll, and the difficulties with which they were beset. The second entry on the roll is, no doubt, a faithful representation of the matter which the court directed to be enrolled, as the first entry was of words which had, in the first instance, fallen from the mouth of counsel. The second entry shows the conclusion of the case, — the verdict for the demandants, to the effect that Margaret and her husband held only for life (as supposed by the fine on which proceedings were instituted), and judgment for the demandants to recover seisin. In the report these details are deferred to a later term.

It sometimes happens that there are widely different reports of the same case, one, perhaps, giving the names of the parties, and another not; one omitting matter which another includes; and one even absolutely at variance with another in relation to what was said, done, or decided. The record of the case is then invaluable, as it is the only authoritative statement of the pleadings accepted, and of the judgment. Sometimes, however, it is necessary to look even beyond the actual record of the case as enrolled in the court in which the action was brought. In difficult cases petitions were frequently made by the parties to the king in his council in his parliament, at various stages before judgment was reached. It then becomes expedient to consult the rolls of parliament if the cause is to be followed out from beginning to end, and the working of the prevailing system of justice to be understood.

The case of the Stauntons [1] affords an apt illustration. The names of the parties are omitted from one of the reports, but given in another. In one report, that in which the names are given, the conclusion is not reached. In the other, judgment is reached, and

[1] Y. B. M. 13 E. 3, No. 15.

even the fact that a writ of error was sued after judgment. The demandant was Geoffrey de Staunton, who brought a formedon in the descender against John de Staunton and Amy his wife, as appears in one of the reports and in the *Placita de Banco*.[1] Amy was admitted to defend, upon her husband's default, and, having vouched one Thomas de Cranthorne, waived that voucher, and vouched her own husband, on the following ground. A fine had been levied, by which John de Staunton acknowledged the tenements in dispute to be the right of Thomas de Cranthorne (as those which he had of John's gift) and by which Thomas rendered the same tenements to John and Amy and the heirs of John. Geoffrey, the demandant, tendered the averment that Thomas never had any estate in the tenements by John's gift. On behalf of Amy, the admissibility of this averment was denied, but the averment was entered on the roll with a protestation on behalf of Amy, that, if the court should be of opinion that it was admissible, she was ready to answer over.

This was a *dignus vindice nodus*, and Geoffrey presented a petition to the king in his council in his parliament. In the report it is stated only that the demandant "sued in parliament," that being a sufficient indication to the lawyers of the period of the course actually pursued. In his petition, the text of which is to be found among the rolls of parliament,[2] Geoffrey represented that the protestation as to Amy's readiness to answer over had been inserted by the clerks of the court by misprision, and prayed a decision as to whether the averment was admissible or not. It was agreed in the council in parliament that the averment was admissible, and that Amy could not be admitted to any further answer, as both parties had stood to judgment absolutely. Writs were accordingly sent to the justices of the Common Pleas, directing them to proceed without delay. The court, however, did not proceed, and another writ was sent to the same effect. Another series of arguments followed, in which Scrope and Willoughby, of the King's Bench, lent their assistance, but disagreed. These arguments, of course, appear only in the report. In the meantime no judgment was given, and Geoffrey, the demandant, presented another petition to the council in parliament, praying that the justices of the Common Pleas might be commanded to give judgment forthwith, or else bring their rolls, record, and process into parliament, so that judg-

[1] Mich. 13 Edward III. R°. 107 d.

[2] 2 Rol. Parl., 124 *b*, as printed.

ment might be given one way or the other, without further delay. It was thereupon agreed by all in full parliament, and commanded by the prelates, earls, barons, and others of the parliament, "that the clerk of the parliament should go to the chief justice and other justices of the Common Bench, and require them to proceed to judgment without further adjournment or delay." In case the justices were unable to agree, they were to come into parliament, and the chief justice was to bring into parliament the rolls and the record of the plea.

Stonore, the chief justice, with the other justices, did bring the record into parliament. The chancellor, the treasurer, the justices of the King's Bench, as well as those of the Common Bench, the barons of the Exchequer, and others of the king's council were there present. The process and record were viewed and read, the point of law was decided as before, and direction was given that Geoffrey should recover his seisin against John and Amy.[1]

Geoffrey's last petition and the whole of the proceedings following upon it are represented in the report by the few words following: "And afterwards the matter was again sent into Parliament, and there judgment was commanded for the demandant for the reason above."

Judgment was then given, as appears both by the report and by the Common Pleas roll, in accordance with the direction of the council in Parliament. Even in the Common Pleas roll, however, there is not the full account of the transaction which is given in the rolls of Parliament, the judgment being prefaced only by these few words: "And thereupon, after advice had as well of the prelates and magnates as of the justices and other of the council of the lord the king, there present in the full parliament last held."

It might have been supposed that the case was now at an end; but the demandant was almost as far as ever from obtaining seisin of the land. The judgment, though given by direction of Parliament, was technically a judgment of the Court of Common Pleas. From that court a writ of error lay to the Court of King's Bench, and a writ of error was accordingly sued. A full account of all the proceedings in error would be tedious, as (except in the fact that John and Amy now became plaintiffs in error, and that the assignments of error and pleadings thereupon took the place of the pleadings in the court below) precisely the same features present

[1] 2 Rol. Parl., 123, as printed.

themselves again. There are again reports in two distinct forms differing from the record[1] in a manner similar to that in which the record of the court below differs from the reports. There are petitions and the counter-petitions to the king in his council, in his parliament, directions from parliament to the justices to proceed, further delays, and further directions. In the end, after five years of litigation, when delay had reached its utmost limit, and when a peremptory order to the justices to proceed followed a last petition from Geoffrey, John and Amy failed to appear, and Geoffrey at length obtained execution of the original judgment.

This case, as well as innumerable others, will show how necessary it is to travel beyond the Year Books in order to understand them, and how intricate is the study of the records if conducted on scientific principles. Since the passing of the Act which abolished most of the real actions, of the Act for the abolition of fines and recoveries, and of the Uniformity of Process Act, in the reign of William IV., the old learning has progressively fallen into decay. Much of it, indeed, had been forgotten still earlier. The number of persons who have any acquaintance with the old forms of action and the old modes of proceeding is every day becoming less; and there is a growing tendency to look upon the public records of England as mere curiosities, or as a hunting-ground for the antiquary and genealogist in search of isolated facts. In like manner it is not uncommonly supposed that the cases in the Year Books can but rarely be of practical utility for the purposes of the lawyer, and that beyond the range of that practical utility they are useless.

In this paper the rolls only of parliament, of the King's Bench, and of the Common Bench have been mentioned, and only the relations of a portion of their contents. The subject of the relation of the various classes of public records to each other, it need hardly be said, is far too wide for discussion in a limited space, as indeed is the relation even of the records of the courts in general to the Year Books in every detail. Enough, however, it may be hoped, has now been said to show how very necessary is a knowledge, not merely of the contents of a particular class of records, but of the bearings of the different classes of records on each other, for a thorough comprehension of the reports.

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[1] Placita coram Rege, Hilary, 15 Edward III. R°. 41.

There is yet another aspect of the reports in the Year Books which has to be regarded. From the undoubted fact that the Year Books are not very intelligible without a proper use of the records relating to them, it is not to be inferred that the records will suffice for all purposes for which the Year Books could be used. In the first place, a record can never serve the purpose of a report, because, as already explained, each is drawn up with a different object. In the second place, the reports may be so treated as to render them the best guides in a search after the most valuable records. No one who knows, for instance, the bulk and the contents of the *Placita de Banco* would think of publishing the whole *in extenso*. On the other hand, however, no one who has not a knowledge of the reports and of their value, not only legal, but historical, could be trusted to make a selection from the rolls.

There are in the reports innumerable matters of interest, legal, historical, constitutional, and social, which have no counterpart in the rolls. In the rolls are the dry bones of the bare facts. In the reports are living men, dealing with the facts in their own language, in the spirit of their own age, in tones which reveal what manner of men they were. Thus, the last thing, perhaps, which might be expected to occur in a report rather than a record, is information relating to horticulture. Yet, in an action of waste,[1] where waste was alleged, *inter alia*, in respect of a whitethorn-tree, there occurs a curious illustration of the practice of grafting. Counsel for the defendant said this ought not to be adjudged waste, because whitethorn is underwood which cannot be the subject of waste in a garden. On the other side, it was replied that whitethorn is a tree upon which a graft may be made, and this was not denied.

We accordingly learn that the practice of grafting on the whitethorn was well known in the fourteenth century in England, and that fruit was already cultivated with some skill.

Judges and counsel must in those days have been good linguists. They were always ready to seize upon the least slip in the grammar of any Latin writ or other instrument in Latin. Their usual language in court was at this period French, and it is real living French, very superior to the law French of a subsequent period, when the language of the courts was English, and the language of

[1] H. 14 E. 3, No. 38.

the reports became a jargon. We see from their arguments exactly how French was spoken in every-day life. Some other dead languages have something analogous in the dramatic writings which have survived; but even a drama does not reproduce the living speech so exactly as a report of words actually spoken, and written down, more or less correctly, at the time, or immediately afterwards, by persons who had actually heard them. The earlier Year Books consequently afford materials for the study, not merely of the written, but also of the spoken language.

As might have been expected, where men of high education were speaking, it usually appears that the rules of courtesy were observed among them. They lived, however, in a comparatively rude age, and in the midst of rough surroundings. Thus we find sometimes a directness of expression which would hardly occur in modern times. In one case,[1] the justices say in so many words that a previous decision had been obtained by favor. In another case,[2] one of the judges is openly blamed by his fellows for too hastily deciding that a writ was good, though they admitted that the decision was correct. The same case illustrates the grammatical training which the lawyers received in the days of the schoolmen, and their readiness to dispute as to the meaning of a word. An action of waste was brought by the Earl of Hereford against Alice, who held in dower by endowment of the previous earl. At the end of the writ of waste occurred the words "*ad exheredationem praedicti comitis*," the intention being to describe the living and plaintiff earl. Counsel for the defence argued that as both earls had been mentioned in the writ, the word *praedicti* did not determine with certainty to which of the two reference was made. Counsel for the plaintiff said the word must be understood to refer to the living earl, though it might be otherwise if one earl brought a writ against another earl. One of the judges then said: "If the words of the writ were '*ad exheredationem ipsius comitis*,' *ipsius* being a demonstrative pronoun, then the word would refer to the earl who is living, but *praedicti* refers to either indifferently." In the end, however, the writ was held good in spite of the quibble.

Judicial jokes are somewhat rare, and, when they occur, are apt to be of the grim and severe type. In Michaelmas Term in the eleventh year of Edward III. (p. 295), one of the judges introduced

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[1] T. 12 E. 3, p. 603.

[2] E. 12 E. 3, pp. 443–5.

a little story more or less relevant to the matter in hand. A man, he said, once brought an assise before the justices at York, and the tenant pleaded that the plaintiff had been outlawed for felony. He had, in fact, been outlawed and subsequently pardoned, but had forgotten to bring his charter of pardon from the inn. He was arraigned instantly. As, however, the chancery was at York (with its records), he vouched the record of his charter of pardon in the chancery. "And," said the judge, "if the chancery had not been at York, he would have gone on his pilgrimage to Knaresmire." The point of the remark lies in the fact that Knaresmire was the place of execution.

Not the least valuable matter in the reports, as distinguished from the records, however, is that which shows how many propositions were accepted, without dispute, as settled law. For modern purposes there is quite as much to be gleaned from such passages as from the substantive decisions for which the Year Books are more often searched. Thus, in Trinity Term, 13 Edward III.[1] a question arose as to the sufficiency of a jury, it being alleged that when a peer of the realm was a party, it was his privilege that there should be a special jury, consisting partly of knights. The point was contested, but the privilege was affirmed by the judges. In this particular case, however, it was a bishop on whose behalf the privilege was claimed as being a peer of the realm. No one suggested that a bishop was not a peer of the realm. It was clearly admitted, as an indisputable fact, by counsel on both sides, and by the judges, that he was. So also in Easter Term in the same year,[2] it was stated by counsel that the Abbot of Ramsey held by barony, and was a peer of the realm. He did not obtain his object, which was to prevent the opposite party, who was plaintiff, having a delay or postponement known as a "day of grace." His case, however, was like those of other peers, mentioned in the books, who did not succeed on this point, and no one argued that the abbot was not a peer of the realm.

In later times it has been the opinion commonly received that a spiritual lord, as such, is not a peer of the realm; and the two cases last mentioned are consequently of very great interest and importance, though showing no express decision on the point. So, also, other subjects from time to time force themselves upon the attention of a student of the Year Books, and indicate how much

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[1] No. 2, p. 291.

[2] No. 24, p. 223.

remains to be written with regard to the English constitution. It is not going beyond the bounds of truth to say that, setting aside battles and statecraft, the greater part of the history of England, as well as of its law, during many centuries in the life of the nation may be found in the Year Books and the corresponding records, which are their complement.

L. Owen Pike.